39 Box 9 - [JGR/*Chadha* re: District of Columbia] (3) - Roberts, John G.: Files SERIES I: Subject File

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 14 1983

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

Enclosed are copies of a proposed communication to be transmitted to the Congress relative to: H.R. 3932, an Act to amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes.

Please advise this office as to the relationship of the proposed communication to the Program of the President.

Sincerely

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

To Coordinate Clearance contact: John E. Logan, OLA, 633-2078

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

Office of the Assistant Attorney General Washington, D.C. 20530

NOT SENT TO CONGRESS

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to your request, this letter presents the views of the Department of Justice on H.R. 3932, a bill "to amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes," as passed by the House of Representatives on October 4, 1983. We oppose the enactment of this legislation unless it is amended consistent with the discussion set forth below.

H.R. 3932 would amend the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774 (1973), as amended, ("Act"). The legislation is in response to the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983) which struck down as unconstitutional so-called "legislative veto" devices. 1/ The Act contains several such devices 2/ purporting to authorize Con-

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1/ The Supreme Court has also affirmed the invalidity of two other legislative veto provisions. See Process Gas Consumers Group v. Consumers Energy Council of America, 103 S. Ct. 3556 (1983), affirming Consumers Energy Council of America v. FERC, 673 F.2d 425 (D.C. Cir. 1982), and Consumers Union, Inc. v. FTC, 691 F.2d 575 (D.C. Cir. 1982).

2/ The Act contains four provisions which may be characterized as legislative vetoes. These are:

(1) Section 303(b) provides that "an amendment to the charter . . . shall take effect only if . . . both Houses of Congress adopt a concurrent resolution . . . approving such amendment.

(2) Section 602(c)(1) provides that with respect to acts effective immediately due to emergency circumstances and acts proposing amendments to Title IV of this Act "no such act shall take effect until the end of the 30-day period . . . and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act."

gress to disapprove actions of the District of Columbia Government without complying with the constitutional requirements of legislation.

The Administration generally supports the approach of H.R. 3932, which would correct the constitutionally invalid portions of the Act by requiring Congressional action disapproving acts passed by the D.C. City Council to take the form of legislation passed by both Houses and presented to the President for approval or disapproval. In one narrow area, however, the Administration believes that it would be more consistent with Congress' prior treatment under the Act to require affirmative approval of acts passed by the D.C. City Council rather than opportunity for disapproval. We recommend that H.R. 3932 be amended to provide that City Council laws amending Titles 22, 23 and 24 of the District of Columbia Code -- which relate to criminal law, criminal procedure and prisoners-- only take effect upon passage by Congress of a joint resolution of ~~dis~~approval. This approach will cure the constitutional infirmities pointed out by the Chadha decision, while retaining the special treatment accorded Titles 22, 23, and 24 under the existing Act.

Under the Constitution, Congress has the exclusive power to legislate for the District of Columbia. Art. I, §8, cl. 17. Pursuant to this authority Congress has enacted Titles 22, 23 and 24 of the D.C. Code. The Department of Justice, through the United States Attorney for the District of Columbia, has been vested with the prosecutive authority in the United States District Court and the District of Columbia Superior Court. D.C. Code §23-101. Indictments are sought, and prosecutions pursued in the name of the United States of America. Similarly, this Department, through the U.S. Marshal for the District of Columbia conducts the service of criminal process, provides court room security, transports prisoners, and returns to the District of Columbia defendants arrested in other jurisdictions and wanted for prosecution in the District of Columbia. The U.S. Marshals Service utilizes its authority under law to serve Superior Court felony subpoenas anywhere in the United States. D.C. Code §11-942(b).

Footnote 2 continued from page 1

(3) Section 602(c)(2) provides that any Act affecting Title 22, 23, or 24 of the District of Columbia Code "shall take effect . . . only if . . . one House of Congress does not adopt a resolution disapproving such act."

(4) Section 740(a) provides that either the House or the Senate may adopt a resolution terminating emergency presidential authority over the Metropolitan Police Department.

Finally, all persons convicted in the District of Columbia are committed to the custody of the Attorney General, who, through the Department's Bureau of Prisons, designates the place of confinement. D.C. Code §24-425. 3/

The Superior Court of the District of Columbia, where jurisdiction for local offenses rests, is a federal court created pursuant to Article I of the Constitution. Palmore v. United States, 411 U.S. 389, 397 (1973). The judges of the Superior Court and the Court of Appeals are appointed by the President. D.C. Code §§11-101, 11-102, 11-301, and 11-1501(a). A single jury system for grand and petit juries serves both the Superior Court and Federal District Court. A grand jury of one court may return indictments to the other. D.C. Code §§11-1902, 11-1903(a). The federal government is, accordingly, deeply interested in the prosecution of crimes under the D.C. Code, their determination before the courts, and the handling of prisoners convicted under the Code.

The federal government owns approximately 41% of all land in the District. Over 200 buildings are owned or leased by the federal government. Over 445,000 federal employees work in the Washington Metropolitan area. As a result, the District draws both the nation's citizens and those of other countries for purposes ranging from conducting business with the federal government to touring the capital. Moreover, the sizable diplomatic community underscores the federal interest in the enactment, enforcement and interpretation of the criminal laws governing the District.

Special treatment for Titles 22, 23 and 24 is consistent with the existing Act and its legislative history. Specifically, in only one area did Congress reserve to itself to veto by vote of only one House the acts of the City Council. Titles 22, 23 and 24 of the D.C. Code. Act §602(c)(2). See also H.R. Rep. No. 482, 93d Cong., 1st Sess. (1973). In fact the original bill, as passed by the House of Representatives, prohibited the soon to be established Council from legislating in the criminal law area. H.R. 9682, 93d Cong., 1st Sess., §602(a)(8) (1973). The Senate version contained no such prohibition. S. 1435, 93d Cong., 1st Sess. (1973). The conference version represented a compromise by inserting a one house veto. Pub. L. No. 93-198, §602(c)(2), 87 Stat. 774 (1973). 4/

3/ By agreement with the Government of the District of Columbia most District of Columbia prisoners are sent to the Lorton Reformatory.

4/ We also note that during the first two years subsequent to the date which elected members of the initial Council took office, the Council was prohibited from legislating in this area while a study of the District of Columbia Criminal Code was undertaken for the Congress. This was later extended to four years. See §602(a)(9) of the Act.

Our concerns in these areas do not take place in a vacuum. Presently before the D.C. Council are three bills, Bill 5-16, the Parole Act of 1983, Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983, and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983, which raise substantial concern. Bill 5-16 would reduce the minimum period of detention to 10 years and would be applicable to individuals incarcerated for such crimes as rape, murder and armed offenses. Bill 5-244 would permit, as a means of budget control, the release into the community of convicted individuals. Bill 5-245 would expand the time for granting a motion to reduce a sentence from 120 days to one year. While this Department has strongly opposed these proposals, see attached statement of Stanley S. Harris, United States Attorney for the District of Columbia, before the City Council of the District of Columbia (October 3, 1983), we believe more importantly, that Congress, through the legislative process, should retain the opportunity to review the wisdom of such proposals. 5/

As this Department has previously stated, the ramifications of the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983), require all parties to review carefully the particular provisions of law at stake. 6/ It is this Department's sincere belief that the interests of both the citizens of the District of Columbia and the nation as a whole are better served by continuing the special treatment accorded Titles 22, 23, and 24 in the Act in a manner consistent with the Supreme Court's decision in INS v. Chadha. We believe that the primary responsibility of the Congress and the President should be maintained in this area. This responsibility can be preserved by requiring a joint resolution of approval for D.C. Council amendments to Titles 22, 23 and 24 of the D.C. Code. We must stress that there is no inherent conflict between the district and federal governments. The issues in H.R. 3932 result

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5/ In 1981, the D.C. Council passed a Sexual Assault Reform Act. Among its provisions was one which lowered the age of consent for minors in statutory rape cases. Another provision would have reduced the maximum sentence for both forcible and statutory rape from life to 20 years imprisonment. The penalty for incest was reduced. The proposal also reduced the penalty for forcible rape to a 10 year maximum if the victim was physically or mentally incapable of consenting or resisting. The House of Representatives passed a resolution disapproving the proposal. H. Res. 208, 97th Cong., 1st Sess., 127 Cong. Rec. H6762 (1981).

6/ See Statement of Edward C. Schmults, Deputy Attorney General, before the Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives (July 18, 1983).

gress to disapprove actions of the District of Columbia Government without complying with the constitutional requirements of legislation.

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Footnote 2 continued from page 1

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(4) Section 740(a) provides that either the House or the Senate may adopt a resolution terminating emergency presidential authority over the Metropolitan Police Department.

PREPARED STATEMENT OF
STANLEY S. HARRIS,
UNITED STATES ATTORNEY FOR
THE DISTRICT OF COLUMBIA,
ON BILLS 5-16, 5-244, and 5-245
OCTOBER 3, 1983

This written statement is submitted to explain in some detail my reasons for testifying in opposition to the passage of Bill 5-16, the Parole Act of 1983; Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983; and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983.

Let me begin by stressing what I consider to be one of the key roles of the United States Attorney as the prosecutor of adult crimes in the District of Columbia. There is in our city an organization, financed by the taxpayers, called the Public Defender Service. It is a fine organization, performing a needed service. However, its name is somewhat misleading, for it does not represent the public. Rather, it represents a relatively small percentage of the criminal defendants in our city -- typically, as a matter of fact, recidivists. The public -- that is, the law-abiding citizens who must be protected against the criminal element in our midst and who all too often become victims of crime -- must be and is represented by the prosecutors of the United States Attorney's Office.

Perhaps the best way to make my initial point is to quote from an article on the editorial page of the Wall Street Journal which was written nearly a year ago about criminal trials. The author of that article, Vermont Royster, stated in relevant part as follows:

> What has happened to the law, I think, is a forgetfulness that there are two parties in every criminal trial. One is the accused, a real person easily visible. The other is "the state," a seemingly impersonal and institutional entity. An injustice to the individual is readily understood. Injustice to "the state" is not so readily recognized. To many, including lawyers, a "fair trial" has come to mean only fair to the accused; fairness to the other party is forgotten.
>
> Yet that entity "the state" is not only all of us but each of us. The person called the prosecutor is in fact a public defender. His task is to try to make our homes and streets safer by

> removing from society those who 12 ordinary citizens decide have been guilty of injury to one or more members of society.

My 182 Assistant United States Attorneys and I fully endorse those observations. So that, as my sons would say, is where I am coming from today. I am here with pre-eminent concern for the victims of crime -- past, present, and future.

I do not like saying what I feel obliged to say today. I would like to speak glowingly of law enforcement successes. I would like to say that our so-called correctional institutions have a meaningful number of people in them who are there needlessly and who are ready to become productive members of society. I cannot do so. The unfortunate but inescapable truth is that we have not too many in our prison facilities but too few.

In giving this testimony, it is our purpose to recite considerable statistical information which, while imperfect, does present a striking overview of what is happening in our criminal justice process. In doing so, I express appreciation to the Department of Corrections for making considerable information available to us for analysis.

I must advise you of my personal, and my Office's institutional, conviction that the problem that the District of Columbia currently is facing is not one of "prison overcrowding," but one of "prison undercapacity." The facts are that those who are incarcerated should be incarcerated, the citizens of this community justifiably desire that they remain incarcerated, and prison expansion is the only proper solution to the problem. This Council would not be acting responsibly if it legislated to achieve the premature release of repeat and dangerous offenders into the law-abiding community by passing the three Bills that are the subject of this hearing.

The appropriateness of characterizing the problem as one of "prison undercapacity" becomes clear when one takes a close look at those who are incarcerated and the reasons for their confinement. Dangerous and repeat offenders permeate our prison population. Statistics generated by the Department of Corrections confirm that fact. The average sentence being served by inmates committed to Lorton Reformatory in 1982 was substantial: that average was 2-3/4 years to 11-1/2

years. During the first quarter of 1983, the average sentence of those committed to Lorton jumped to from 4-1/2 years to just over 14 years. Further, in 1982, approximately 32% of the inmates were sentenced to consecutive terms of imprisonment, an additional 21% of the inmates were serving concurrent time on multiple counts, and approximately 16% of the inmates had detainers pending against them for other crimes charged in this or other jurisdictions. Data on the past criminal history of inmates unfortunately is not kept by the Department of Corrections, but experience dictates, and the above figures confirm, that virtually all of those incarcerated at Lorton are recidivists.

That the inmates at Lorton are dangerous is clear from the types of crimes for which they are incarcerated. In 1982, 45.6% of the newly-committed inmates were incarcerated for crimes against persons, and during the first quarter of 1983 that figure jumped to 52%. Armed robbers comprised 56.9% of those incarcerated for personal crimes in 1982; during the first three months of 1983 they comprised 67% of the same population. Persons convicted of drug abuse, burglars, thieves, and weapons offenders, in that order, accounted for an additional 46% of the total prison population. The remaining prisoners were incarcerated for other offenses, which include bail jumping and escape. When the intimate connection between drug and weapons offenses and other crimes is factored into these figures, the serious and violent nature of virtually all of the inmates cannot be disputed.

The above statistics represent defendants committed to Lorton for the first time for a particular offense. Convicts who were <u>recommitted</u> to Lorton for parole violations, halfway house and work release violations, and escapes, represented approximately 40% of inmate admissions. This fact serves to verify that those incarcerated should remain there as ordered by conscientious judges for the good of the community and for the safety of potential innocent victims.

I recognize that a number of offenders affected by the Bills before this Council currently are incarcerated at Occoquan, a small step admirably taken to help relieve overcrowding at Lorton. Although intended to house only misdemeanor convicts, Occoquan also holds convicted felons. In 1982, 83.3% of the Occoquan residents had been convicted of assault, grand theft, weapons, drug, and other serious offenses. Bail violators, parole violators, and fugitives accounted for an additional 2.5% of the population. Of those inmates at Occoquan, 75.4% previously had been committed to the Department of Corrections, and 35% were there on drug convictions. Thus,

it is only sensible to conclude that most of those at Occoquan are serious offenders. Moreover, experience reveals that all of the committed offenders are recidivists, for the alternatives of pretrial diversion, the Federal Youth Corrections Act, and probation literally without exception have been exhausted before a Court has determined that incarceration is the appropriate remedy to achieve the inescapable goals of deterrence and punishment.

The D.C. Jail also houses many sentenced offenders who would be affected by passage of the Bills before the Council. Sentenced felons comprise over 25%, and sentenced misdemeanants comprise only 11%, of the current population of the jail. Most of these are awaiting transfer to Occoquan or Lorton, and the available information reveals that many are serious -- and virtually all are repeat -- offenders. Further, the vast majority are drug abusers. A recent Washington Post article indicated that as many as 76% of the inmates at the D.C. Jail were drug abusers (during a time in which the City was not cracking down in any concentrated way on drug offenders).

One point cannot be overemphasized. When prison needs were projected two or three decades ago, not even the wildest pessimist could have predicted the extraordinary extent to which narcotics and narcotics-related offenses would swell both our incidence of criminal offenses and our prison populations. Today, the intimate connection between drug abuse and other serious criminal activity is well established. Recent studies have shown that large numbers of incarcerated offenders were under the influence of drugs when they committed their crimes, and that heroin addicts -- of which the District of Columbia has far more than its share -- commit six times as many crimes during periods of addiction as during periods of abstinence. Thus it is deplorable but not surprising that 80% of the offenders committed to the Lorton Youth Center admit to having abused drugs. This very serious problem should be addressed by the Council, but prematurely turning convicted abusers out on the streets is not a tolerable solution.

The extent to which incarcerated persons already are being returned to society at an early date should be recognized. In 1982, the Board of Parole released 61% of all prisoners at their first hearing dates, and 73% of the remainder were released at their second hearing dates. As might be expected, in a recent study by the Board of Parole which was designed to evaluate the success or failure of prisoners released to parole supervision, the authors found

that 52% of parolees incurred new arrests during the two-year period following their release.*/ Eighty percent of those rearrested subsequently were convicted. Of additional interest is the further finding that of those who sustained convictions while on parole, more than one-half never had their parole revoked, and remained on the streets of this community pending their new convictions. Thus, an unacceptably high number of offenders who are on parole are continuing to victimize law-abiding citizens, and to add to their number by prematurely releasing others would only exacerbate the situation.

In light of all of the above, it is evident that our jail and prisons house dangerous and repeat offenders, many of whom maintain dangerous drug habits, and almost all of whom must remain incarcerated with their normal release dates if anything more than lip service is to be paid to ensuring community safety.

Next, it is important to emphasize that the citizens of this City, who comprise the Council's and my own constituency, want serious offenders to remain incarcerated. Their concerns were made clear by their overwhelming approval of the Mandatory Minimum Sentences Initiative which became law last June. They also have supported recent police efforts to apprehend repeat and serious offenders, and are participating in growing numbers in neighborhood crime watch programs. The Council would be showing disdain for these efforts if it enacted the proposed Bills.

Further, much public and private effort and money have been expended in order to identify, apprehend, and convict serious offenders. This investment of time and money should not be wasted by releasing those offenders prematurely. Such a result would be inconsistent with the popular view that violent and dangerous offenders should be incarcerated, as evidenced also by the strong support shown for the bail law amendments which were passed unanimously by this Council 15 months ago.

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*/ Of those, 25% were rearrested between 1 to 4 months of parole, 56% were rearrested within 8 months of their parole, 79% were rearrested within a year, and only 21% lasted at least 13 months without being rearrested.

Given this expressed concern, it should be no surprise that the citizens would be willing to foot the bill to keep dangerous recidivists off the streets. As do you, we have frequent contacts with citizens and community leaders. It is our conclusion that they virtually unanimously support the appropriation of public funds to increase jail capacity. I would willingly join with the Council in posing the issue directly to the citizens of this City, and I would live (happily, I am confident) with the results. Moreover, such expenditures ultimately would be returned to the City many times over if the streets were made safer for businesses on which to operate and for individuals to enjoy.

Additionally, to release criminals prematurely is to buck the current local and national trend to treat crime victims, both actual and potential, with more compassion. The majority of released criminals currently victimize others shortly after their release; their premature release thus would create proportionately more victims. Not only is this result unacceptable to the reasonable person; it is contrary to the expressed intent of this Council in proposing and passing several victims rights bill, two of which are scheduled to be heard in two weeks, on October 17, 1983.

In sum, any measure which would result in the premature release of serious offenders would make a mockery of citizen efforts to improve the safety of their community, would be inconsistent with other actions taken by this Council, and would contradict common sense.

It is thus clear that the problem of prison undercapacity can be solved only by building or acquiring more prison space, and this is a solution that not only is attainable, but that is directly supported by the Congress of the United States, which only last week appropriated more than $20 million for added prison facilities. In the recent past, due to the growing crime rate, the criminal justice system has been supplied with additional judges, additional prosecutors, additional support personnel, and additional court facilities. Despite those facts, little additional prison space has been provided to house the additional criminals which inevitably have been caught, prosecuted, and incarcerated. This situation cries out for correction.

It should be noted that our jail is crowded with inmates who properly should be in a prison facility. Data developed by the Department of Corrections reveals that in 1982, an average of 482 inmates, or 25.1% of the total jail

population, were sentenced felons. An additional average of 212 prisoners, or 11.1% of the total jail population, were sentenced misdemeanants. These inmates should have been sent to a correctional, instead of to a detention, facility. If that had occurred, the jail (by its own figures) would have been underpopulated. We believe that this situation remains unchanged in 1983.

Further, it is significant to note that, contrary to the belief of some, the jail is not full of pretrial detainees. Jail authorities unfortunately do not keep precise statistics, but a substantial number of the unsentenced offenders actually have been convicted but remain in jail awaiting sentence. Therefore, the percentage of unsentenced offenders who are detained awaiting trial should be very small -- probably less than 10% of all defendants awaiting trial. Moreover, under the current bail laws, almost all of those are violent, dangerous, and/or repeat offenders.

Some have suggested that because recent crime statistics seem to indicate that reported crime has decreased slightly, no new measures need be taken to expand prison capacity. Initially, I would point out that the figures reflect only the reported crime rate, and it is commonly accepted that 50 to 70% of the crime in any large urban area goes unreported. Beginning, however, with the reported crime rate, the Metropolitan Police Department's own statistics reveal that in 1982 they "closed," by identifying the assailant, only 57.5% of the murders, 64.3% of the forcible rapes, 20.8% of the robberies, 65.6% of the aggravated assaults, and 13.2% of the burglaries which were committed and reported. These numbers do not reflect accurately the percentage of criminals actually caught, however, because the Police Department considers a case "closed" if only one of several perpetrators is identified, and in a significant number of cases, identification does not correlate with arrest. In sheer numbers, the Police Department reported that in 1982 it "closed" 127 out of 221 reported murders, 285 out of 443 reported rapes, 2,040 out of 9,799 reported robberies, 2,332 out of 3,553 aggravated assaults, and 2,071 out of 15,682 reported burglaries.

Of the 221 reported homicides, only 61 guilty judgments were entered, with 33 cases remaining open. Thus, in less than 30% of the reported homicides was the murderer ever held accountable for his actions. Further, of the 443 reported rape offenses, only 76 guilty findings were obtained. Of the frightening total of 9,799 reported robberies, only 706 defendants were held accountable. For the offense of aggravated assault, only 182 defendants were found guilty out of 3,553 reported cases, and for the offense of burglary, only

419 guilty judgments were entered out of a total of 15,682 reported cases. Moreover, it is unquestionably true that a large percentage of those convicted received probation, and that less than half of them went to jail. In short, of the total number of persons who commit crimes in this City, only 20 to 50% have their criminal activities reported, only 10 to 20% are identified, less than 5% are convicted, and less than 3% are incarcerated. Thus, it is clear that of the large number of serious offenders in this City, only an infinitesimal percentage actually are incarcerated for their crimes. To strive artificially through legislative fiat to reduce this number manifestly is absurd, for that percentage is, in my view, an irreducible minimum.

Also illustrative of the continuing serious nature of the crime problem in this City are the increases in the reported incidents of armed robbery, robbery, and drug offenses. Over the last five years the number of adults arrested for armed robbery increased from 721 in 1978 to 896 in 1981, with the 1982 statistics showing a slight decline to 805. The number of adult arrests for unarmed robberies increased steadily from 849 in 1978 to 1,097 in 1981, with the 1982 figures showing a slight decrease to 1,014. For felony drug offenses, the numbers have risen steadily from 169 arrests in 1978 to 2,353 in 1982. An additional 4,641 misdemeanor drug arrests were made in 1982.

Insofar as the number of cases indicted may provide a more accurate forecast of the future prison population, the statistics for the key offenses of armed robbery and drug abuse are both informative and staggering. In 1978, 372 defendants were indicted for armed robbery, and 124 defendants were indicted for drug offenses. In 1982, 561 defendants were indicted for armed robbery, and 863 defendants were indicted for drug offenses.

It is therefore evident that any slight decrease in the amount of reported dangerous and violent crime in this City will have no long-term effect on the prison population, and should not be used as an excuse to ignore the problem of prison undercapacity. Similarly, discussions of alternative sentencing and diversion beg the issue. Alternative sentencing is a tool which currently is frequently used by judges in appropriate cases, and our Office already is exercising pretrial diversion for virtually every eligible defendant. Further, as stated above, most, if not all, of those sentenced to incarderation previously have been granted forms of diversion and probation. (Literally the only exception to the sequential diversion and probation route prior to incarceration is the first-degree murderer, who may have no prior record but who faces a mandatory sentence of 20 years to life.)

Focusing specifically on the three Bills before the Council today, I must urge the Council to defeat each one. The "Parole Act of 1983," Bill 5-16, introduced by Councilmember Ray, proposes to release exactly those violent and dangerous criminals who should remain incarcerated for a more substantial period of time by reducing the minimum period of detention to 10 years. Those inmates who are incarcerated for more than a minimum of 10 years are murderers, rapists, and armed offenders. This Bill would advance most of their release dates by at least four to five years, and, as statistics prove that the majority of those released will victimize others relatively soon after release, passage of the Bill would pose a clear and present danger to the community.

Moreover, I am obliged to point out that technically the Bill may not accomplish what it supposedly is intended to achieve. The preamble to the Bill states that it intends "to require that all prisoners become eligible for release on parole after having served ten years . . . " (emphasis added), but, in our view, it would not apply to first-degree murder convictions. 22 D.C. Code § 2404(b) states that "notwithstanding any other provision of law," a person convicted of first-degree murder must serve a minimum of 20 years. Additionally, it is questionable whether the Bill's terms would apply to prisoners serving consecutive sentences totaling more than 10 years. (We believe that they would not.) Of course, I am not advocating that this Bill be amended to include persons convicted of premeditated first-degree murder or to prisoners serving substantial consecutive sentences, but rather that it be defeated in its entirety.

Concerning the "Prison Overcrowding Emergency Power Act of 1983," Bill 5-244, also introduced by Councilmember Ray, I note that it would allow the Mayor, as a means of budget control, to release dangerous prisoners into the community. Reduced to its essence, this Bill would sacrifice the safety of the community on the altar of fiscal irresponsibility.

There are other problems inherent in the Bill which should cause it to fail of passage. The Bill provides for repeated acts of reducing sentences by 90 days, even for persons who have no chance of being released immediately as a result. For those prisoners who are not within 90 days of parole eligibility, who indeed may be eight to ten years away from parole eligibility, the existence of an undefined "emergency" would result in reducing their ultimate sentences for no good reason, and would not assist in solving the immediate problem of reducing prison congestion.

The third piece of legislation under consideration, the "District of Columbia Sentencing Improvements Act of 1983," Bill 5-245, introduced by Councilmember Rolark, is unwise and probably illegal. In extending the time for granting a motion to reduce sentence from 120 days to one year, following what ultimately could be a denial of a petition for a writ of certiorari to the Supreme Court years after conviction, this Bill would make a mockery of the time-honored concept of certainty in sentencing, and would undermine the very purpose of deterrence that underlies the act of sentencing. The Supreme Court has spoken clearly about the need for finality in all legal, and especially criminal, proceedings, most recently in deciding death penalty cases. If this Bill passes, defendants will be on notice that the criminal justice system in the District of Columbia may be manipulated to exact minimal punishment, and the deterrent effect of other actions taken by this Council will deteriorate.

Additionally, this Bill would tie up scarce judicial resources at late stages of criminal proceedings, and would detract from recent efforts to afford defendants not yet convicted more speedy trials. I doubt that the Council seriously desires this result.

Moreover, a motion to reduce sentence is not designed to be used as a tool to reduce the number of criminals incarcerated. The caselaw is clear that a motion to reduce sentence properly is to be filed only to allow a court to reconsider its sentencing decision in light of the factors present at the time of sentencing, and not in light of a prisoner's artificial conduct in the early stages of his incarceration. An offender's conduct in prison properly is a subject of consideration by the parole board, and not by the sentencing judge.

Finally, and decisively, this Bill erroneously assumes that the Council has the power to amend the Superior Court Rules which govern the filing of sentence reduction motions. Section 946 of Title 11 of the D.C. Code states that the Federal Rules of Criminal Procedure shall apply in Superior Court except as otherwise authorized by the District of Columbia Court of Appeals. The Home Rule Act provides that the Council of the District of Columbia may not alter Title 11. District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code, Title VI, § 602(a)(4). Therefore, any amendment to the Superior Court Rules requires action by the judges themselves, and any legislation by the Council on this matter would be inappropriate. Nonetheless, I note that the Federal Criminal Rule 35 has been amended to allow greater flexibility, and our courts now are studying the situation.

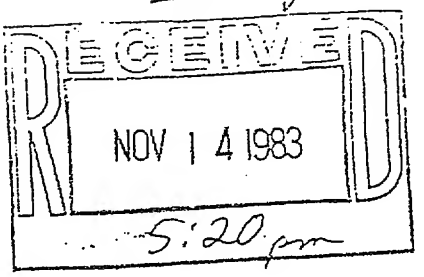
All three of these Bills thus are based upon the wrong premise -- that convicted serious offenders should be released prematurely for budgetary reasons -- rather than on the correct premise that convicted serious offenders, who at great expense to this City have been apprehended and prosecuted, should be treated and kept in a secure facility for as long as the sentencing judges found appropriate and necessary. Hard statistics prove that premature release results in creating untold numbers of new victims, and to accept this result would be to ignore the citizens' mandate to make their streets, homes, and businesses as safe as possible. It is time for the District of Columbia government to recognize both the realities of the situation and the will of its constituents, to bite the proverbial bullet, and to provide more facilities to solve the problem of prison undercapacity. As I have noted, that task was aided by the fact that just last week, the Congress of the United States appropriated more than $20 million for that purpose. Maximum effective use should be made of those funds, and the Council -- as should the Executive Branch -- should deal realistically with the existing problems.

It does not please me to bring to light the realities of our relative lack of law enforcement success in today's world, in which the cancer of narcotics and narcotics-related crime is eating away at the very fabric of our social institutions. I would serve this distinguished body poorly, however, were I to do otherwise. It is axiomatic that a large amount of crime today is committed by a disproportionately small number of chronic offenders. Once such offenders have been brought to justice, it defies reason to support their premature release for purely budgetary reasons. No one can be unaware of the dramatic increase in recent years of dead-bolt locks, alarm systems, and barred windows and doors. It is the law-abiding citizens of the Nation's Capital, rather than its criminal element, who deserve the full support of the Council.

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — Washington, D.C. 20530

Draft



Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to your request, this letter presents the views of the Department of Justice on H.R. 3932, a bill "to amend the District of Columbia Self-Government and Governmental Reorganization Act, and for other purposes," as passed by the House of Representatives on October 4, 1983. We oppose the enactment of this legislation unless it is amended consistent with the discussion set forth below.

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gress to disapprove actions of the District of Columbia Government without complying with the constitutional requirements of legislation.

The Administration generally supports the approach of H.R. 3932, which would correct the constitutionally invalid portions of the Act by requiring Congressional action disapproving acts passed by the D.C. City Council to take the form of legislation passed by both Houses and presented to the President for approval or disapproval. In one narrow area, however, the Administration believes that it would be more consistent with Congress' prior treatment under the Act to require affirmative approval of acts passed by the D.C. City Council rather than opportunity for disapproval. We recommend that H.R. 3932 be amended to provide that City Council laws amending Titles 22, 23 and 24 of the District of Columbia Code -- which relate to criminal law, criminal procedure and prisoners-- only take effect upon passage by Congress of a joint resolution of ~~dis~~approval. This approach will cure the constitutional infirmities pointed out by the Chadha decision, while retaining the special treatment accorded Titles 22, 23, and 24 under the existing Act.

Under the Constitution, Congress has the exclusive power to legislate for the District of Columbia. Art. I, §8, cl. 17. Pursuant to this authority Congress has enacted Titles 22, 23 and 24 of the D.C. Code. The Department of Justice, through the United States Attorney for the District of Columbia, has been vested with the prosecutive authority in the United States District Court and the District of Columbia Superior Court. D.C. Code §23-101. Indictments are sought, and prosecutions pursued in the name of the United States of America. Similarly, this Department, through the U.S. Marshal for the District of Columbia conducts the service of criminal process, provides court room security, transports prisoners, and returns to the District of Columbia defendants arrested in other jurisdictions and wanted for prosecution in the District of Columbia. The U.S. Marshals Service utilizes its authority under law to serve Superior Court felony subpoenas anywhere in the United States. D.C. Code §11-942(b).

. . . . . .

Footnote 2 continued from page 1

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The Superior Court of the District of Columbia, where jurisdiction for local offenses rests, is a federal court created pursuant to Article I of the Constitution. Palmore v. United States, 411 U.S. 389, 397 (1973). The judges of the Superior Court and the Court of Appeals are appointed by the President. D.C. Code §§11-101, 11-102, 11-301, and 11-1501(a). A single jury system for grand and petit juries serves both the Superior Court and Federal District Court. A grand jury of one court may return indictments to the other. D.C. Code §§11-1902, 11-1903(a). The federal government is, accordingly, deeply interested in the prosecution of crimes under the D.C. Code, their determination before the courts, and the handling of prisoners convicted under the Code.

The federal government owns approximately 41% of all land in the District. Over 200 buildings are owned or leased by the federal government. Over 445,000 federal employees work in the Washington Metropolitan area. As a result, the District draws both the nation's citizens and those of other countries for purposes ranging from conducting business with the federal government to touring the capital. Moreover, the sizable diplomatic community underscores the federal interest in the enactment, enforcement and interpretation of the criminal laws governing the District.

Special treatment for Titles 22, 23 and 24 is consistent with the existing Act and its legislative history. Specifically, in only one area did Congress reserve to itself to veto by vote of only one House the acts of the City Council — Titles 22, 23 and 24 of the D.C. Code. Act §602(c)(2). See also H.R. Rep. No. 482, 93d Cong., 1st Sess. (1973). In fact the original bill, as passed by the House of Representatives, prohibited the soon to be established Council from legislating in the criminal law area. H.R. 9682, 93d Cong., 1st Sess., §602(a)(8) (1973). The Senate version contained no such prohibition. S. 1435, 93d Cong., 1st Sess. (1973). The conference version represented a compromise by inserting a one house veto. Pub. L. No. 93-198, §602(c)(2), 87 Stat. 774 (1973). 4/

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[Our concerns in these areas do not take place in a vacuum. Presently before the D.C. Council are three bills, Bill 5-16, the Parole Act of 1983, Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983, and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983, which raise substantial concern. Bill 5-16 would reduce the minimum period of detention to 10 years and would be applicable to individuals incarcerated for such crimes as rape, murder and armed offenses. Bill 5-244 would permit, as a means of budget control, the release into the community of convicted individuals. Bill 5-245 would expand the time for granting a motion to reduce a sentence from 120 days to one year. While this Department has strongly opposed these proposals, ~~see attached statement of Stanley S. Harris, United States Attorney for the District of Columbia, before the City Council of the District of Columbia (October 3, 1983),~~ we believe more importantly, that Congress, through the legislative process, should retain the opportunity to review the wisdom of such proposals. 5/] (MOVED TO FOOTNOTE AT BOTTOM OF PAGE 3.)

and of course the Council has not yet acted upon them,

~~As this Department has previously stated, the ramifications of the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2764 (1983), requires all parties to review carefully the particular provisions of law at stake. 6/ It is this Department's sincere belief that the interests of both the citizens of the District of Columbia and the nation as a whole are better served by continuing the special treatment accorded Titles 22, 23, and 24 in the Act in a manner consistent with the Supreme Court's decision in INS v. Chadha. We believe that the primary responsibility of the Congress and the President should be maintained in this area. This responsibility can be preserved by requiring a joint resolution of approval for D.C. Council amendments to Titles 22, 23 and 24 of the D.C. Code. We must stress that there is no inherent conflict between the district and federal governments.~~ The issues in H.R. 3932 result

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6/ See Statement of Edward C. Schmults, Deputy Attorney General, before the Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives (July 18, 1983).

from the unique federal and district relationship embodied in present law. This Department values its representation of the citizens of the District of Columbia and shares their goal of ensuring that a fair, efficient, and effective criminal justice system be in place. In conclusion, we oppose enactment of H.R. 3932 unless it is amended consistent with the views expressed in this letter.7/

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General

7/ We are sensitive to the need of the District of Columbia to have the ability to raise revenues through the municipal bond market. Section (1)(i) of H.R. 3932 is directed toward ratifying previous actions of the D.C. Council with respect to these bonds. We would suggest, however, that §(1)(i) be clarified so as not to infer that actions of the D.C. Council which never became effective, whether because they were subject to Congressional action or otherwise, are ratified.

INSERT ON P. 4

The Supreme Court decision in Immigration and Naturalization Service v. Chadha requires this arrangement to be reworked. Our objection to H.R. 3932 is that it asks the Federal Government permanently to surrender its authority in an area of its plenary responsibility. We believe that in light of the historic responsibility of the Federal Government for criminal law enforcement, the interests of both the citizens of the District of Columbia and the nation as a whole are better served by continuing the special treatment accorded Titles 22, 23, and 24 and maintaining the primary responsibility of the Congress and the President in this area. This responsibility can be preserved by requiring a joint resolution of approval for D.C. Council amendments to Titles 22, 23, and 24 of the D.C. Code. In this connection it should be noted that this proposal would give the D.C. Government more authority than it had under prior law in every area except the criminal field.

It is important to note that the question at stake transcends the issues of the moment and that there is no inherent conflict between the district and federal governments....

U.S. Department of Justice

Office of Legislative Affairs

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530
November 14, 1983

MEMORANDUM

TO : Richard A. Hauser
Deputy Counsel to the President

FROM: Michael W. Dolan
Deputy Assistant Attorney General
Office of Legislative Affairs

RE : Legislation Affecting Federal Interests
in the District of Columbia

In response to your request for a description of legislation affecting Federal interests in the District of Columbia, I have selected the following items. Although several of these items appear to be interrelated, I have listed them in no particular order.

1. Chadha amendment to the Home Rule Act. The Home Rule Act presently provides for a one-House veto to D.C. Council amendments to the criminal justice provision of the D.C. Code and a concurrent resolution veto for other provisions. As passed by the House, H.R. 3932 would replace these legislative veto provisions with a joint resolution veto mechanism. A copy of our letter recommending that joint resolution approval be required for the criminal justice provisions of the D.C. Code is attached. The bill is presently before the Senate Governmental Affairs Committee, and while a mark-up is scheduled for Thursday, the bill's chances for immediate passage appear uncertain.

2. Prison/Parole bills pending before the D.C. City Council. Bill 5-16, the proposed Parole Act of 1983, would reduce the minimum period of detention to ten years regardless of the offense. Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983, would permit the release of prisoners as a budget control measure. Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983, would expand the time for granting a motion to reduce a sentence from 120 days to one year. A copy of a statement of U.S. Attorney Stanley S. Harris is attached.

3. District of Columbia Judicial and Criminal Justice Reform Act. The current draft of this bill, which will probably be introduced by Congressman Dymally and marked up next year by his District of Columbia Subcommittee on Judiciary and Education, would

-- transfer local prosecutive authority from the U.S.
the D.C. Marshal,

-- transfer U.S. Marshal functions to an Office of the D.C. Marshal,

-- enable the citizens of the District to vote by referendum whether to give the Mayor authority to appoint D.C. judges or to select judges by popular election, and

-- enable the citizens of the District to vote by referendum whether to give the Mayor authority to appoint the D.C. Attorney General or select the Attorney General by popular election.

A package of materials prepared by Stanley Harris in response to the discussion draft of this bill is attached.

4. Seven Superior Court Judgeships. A proposal to increase the authorized number of Superior Court Judges from 43 to 50 suddenly became an issue when House District Committee Chairman Dellums deleted the necessary language from the D.C. Appropriations bill. That the District of Columbia Government is retreating from this proposal (see attached clipping from Washington Post, November 9, 1983, p. B3) may be indicative of their optimism for legislation to authorize D.C. judge selections by someone other than the President. Another explanation for the local government's opposition may be that they are seeking a "deal" on the number of minority appointments that would be made from the seven judges and the necessary number of Assistant U.S. Attorneys that would accompany them. (See attached copy of a letter from Congressman Fauntroy to Senator Specter). Hearings have been held on S. 2075 and are scheduled for later this week on H.R. 4146. However, while it is possible that a bill could get through the Senate this session, it is unlikely that the House would act in the face of District opposition.

5. Modification of the "Duncan Ordinance" Restricting Distribution of D.C. Arrest Records. U.S. Attorney-designate diGenova has prepared a letter from himself to the Mayor requesting an amendment to 1 D.C. Code §2530 to provide that nothing in that provision would prohibit the routine reporting of criminal history record information to the FBI's Identification Division. Until the Mayor responds to this request, a Federal proposal may be premature. Moreover, inquiries with Senator Specter's staff indicate that they would prefer to avoid the controversy that a criminal history records amendment would bring to the D.C. Judges bill.

6. D.C. Parole Board Authority over D.C. Code Violators in Federal Prisons. H.R. 3369, which passed the House on July 25th, would give the D.C. Board of Parole authority over D.C. Code violators incarcerated in Federal prisons. At the moment, no action is planned in the Senate. A copy of the Department's views is attached.

cc: Joseph diGenova
Jay Stephens
√ John Roberts, White House Counsel
John Logan
Harold Koh, OLC
Dennis Kennedy

U.S. Department of Justice
Office of Legislative Affairs

TO BUDGET FOR CLEARANCE

NOV 14 1983

Office of the Assistant Attorney General Washington, D.C. 20530

NOT SENT TO CONGRESS

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

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The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General

Enclosure

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PREPARED STATEMENT OF
STANLEY S. HARRIS,
UNITED STATES ATTORNEY FOR
THE DISTRICT OF COLUMBIA,
ON BILLS 5-16, 5-244, and 5-245
OCTOBER 3, 1983

This written statement is submitted to explain in some detail my reasons for testifying in opposition to the passage of Bill 5-16, the Parole Act of 1983; Bill 5-244, the Prison Overcrowding Emergency Powers Act of 1983; and Bill 5-245, the District of Columbia Sentencing Improvements Act of 1983.

Let me begin by stressing what I consider to be one of the key roles of the United States Attorney as the prosecutor of adult crimes in the District of Columbia. There is in our city an organization, financed by the taxpayers, called the Public Defender Service. It is a fine organization, performing a needed service. However, its name is somewhat misleading, for it does not represent the public. Rather, it represents a relatively small percentage of the criminal defendants in our city -- typically, as a matter of fact, recidivists. The public -- that is, the law-abiding citizens who must be protected against the criminal element in our midst and who all too often become victims of crime -- must be and is represented by the prosecutors of the United States Attorney's Office.

Perhaps the best way to make my initial point is to quote from an article on the editorial page of the Wall Street Journal which was written nearly a year ago about criminal trials. The author of that article, Vermont Royster, stated in relevant part as follows:

> What has happened to the law, I think, is a forgetfulness that there are two parties in every criminal trial. One is the accused, a real person easily visible. The other is "the state," a seemingly impersonal and institutional entity. An injustice to the individual is readily understood. Injustice to "the state" is not so readily recognized. To many, including lawyers, a "fair trial" has come to mean only fair to the accused; fairness to the other party is forgotten.
>
> Yet that entity "the state" is not only all of us but each of us. The person called the prosecutor is in fact a public defender. His task is to try to make our homes and streets safer by

> removing from society those who 12 ordinary citizens decide have been guilty of injury to one or more members of society.

My 182 Assistant United States Attorneys and I fully endorse those observations. So that, as my sons would say, is where I am coming from today. I am here with pre-eminent concern for the victims of crime -- past, present, and future.

I do not like saying what I feel obliged to say today. I would like to speak glowingly of law enforcement successes. I would like to say that our so-called correctional institutions have a meaningful number of people in them who are there needlessly and who are ready to become productive members of society. I cannot do so. The unfortunate but inescapable truth is that we have not too many in our prison facilities but too few.

In giving this testimony, it is our purpose to recite considerable statistical information which, while imperfect, does present a striking overview of what is happening in our criminal justice process. In doing so, I express appreciation to the Department of Corrections for making considerable information available to us for analysis.

I must advise you of my personal, and my Office's institutional, conviction that the problem that the District of Columbia currently is facing is not one of "prison overcrowding," but one of "prison undercapacity." The facts are that those who are incarcerated should be incarcerated, the citizens of this community justifiably desire that they remain incarcerated, and prison expansion is the only proper solution to the problem. This Council would not be acting responsibly if it legislated to achieve the premature release of repeat and dangerous offenders into the law-abiding community by passing the three Bills that are the subject of this hearing.

The appropriateness of characterizing the problem as one of "prison undercapacity" becomes clear when one takes a close look at those who are incarcerated and the reasons for their confinement. Dangerous and repeat offenders permeate our prison population. Statistics generated by the Department of Corrections confirm that fact. The average sentence being served by inmates committed to Lorton Reformatory in 1982 was substantial: that average was 2-3/4 years to 11-1/2

years. During the first quarter of 1983, the average sentence of those committed to Lorton jumped to from 4-1/2 years to just over 14 years. Further, in 1982, approximately 32% of the inmates were sentenced to consecutive terms of imprisonment, an additional 21% of the inmates were serving concurrent time on multiple counts, and approximately 16% of the inmates had detainers pending against them for other crimes charged in this or other jurisdictions. Data on the past criminal history of inmates unfortunately is not kept by the Department of Corrections, but experience dictates, and the above figures confirm, that virtually all of those incarcerated at Lorton are recidivists.

That the inmates at Lorton are dangerous is clear from the types of crimes for which they are incarcerated. In 1982, 45.6% of the newly-committed inmates were incarcerated for crimes against persons, and during the first quarter of 1983 that figure jumped to 52%. Armed robbers comprised 56.9% of those incarcerated for personal crimes in 1982; during the first three months of 1983 they comprised 67% of the same population. Persons convicted of drug abuse, burglars, thieves, and weapons offenders, in that order, accounted for an additional 46% of the total prison population. The remaining prisoners were incarcerated for other offenses, which include bail jumping and escape. When the intimate connection between drug and weapons offenses and other crimes is factored into these figures, the serious and violent nature of virtually all of the inmates cannot be disputed.

The above statistics represent defendants committed to Lorton for the first time for a particular offense. Convicts who were recommitted to Lorton for parole violations, halfway house and work release violations, and escapes, represented approximately 40% of inmate admissions. This fact serves to verify that those incarcerated should remain there as ordered by conscientious judges for the good of the community and for the safety of potential innocent victims.

I recognize that a number of offenders affected by the Bills before this Council currently are incarcerated at Occoquan, a small step admirably taken to help relieve overcrowding at Lorton. Although intended to house only misdemeanor convicts, Occoquan also holds convicted felons. In 1982, 83.3% of the Occoquan residents had been convicted of assault, grand theft, weapons, drug, and other serious offenses. Bail violators, parole violators, and fugitives accounted for an additional 2.5% of the population. Of those inmates at Occoquan, 75.4% previously had been committed to the Department of Corrections, and 35% were there on drug convictions. Thus,

it is only sensible to conclude that most of those at Occoquan are serious offenders. Moreover, experience reveals that all of the committed offenders are recidivists, for the alternatives of pretrial diversion, the Federal Youth Corrections Act, and probation literally without exception have been exhausted before a Court has determined that incarceration is the appropriate remedy to achieve the inescapable goals of deterrence and punishment.

The D.C. Jail also houses many sentenced offenders who would be affected by passage of the Bills before the Council. Sentenced felons comprise over 25%, and sentenced misdemeanants comprise only 11%, of the current population of the jail. Most of these are awaiting transfer to Occoquan or Lorton, and the available information reveals that many are serious -- and virtually all are repeat -- offenders. Further, the vast majority are drug abusers. A recent Washington Post article indicated that as many as 76% of the inmates at the D.C. Jail were drug abusers (during a time in which the City was not cracking down in any concentrated way on drug offenders).

One point cannot be overemphasized. When prison needs were projected two or three decades ago, not even the wildest pessimist could have predicted the extraordinary extent to which narcotics and narcotics-related offenses would swell both our incidence of criminal offenses and our prison populations. Today, the intimate connection between drug abuse and other serious criminal activity is well established. Recent studies have shown that large numbers of incarcerated offenders were under the influence of drugs when they committed their crimes, and that heroin addicts -- of which the District of Columbia has far more than its share -- commit six times as many crimes during periods of addiction as during periods of abstinence. Thus it is deplorable but not surprising that 80% of the offenders committed to the Lorton Youth Center admit to having abused drugs. This very serious problem should be addressed by the Council, but prematurely turning convicted abusers out on the streets is not a tolerable solution.

The extent to which incarcerated persons already are being returned to society at an early date should be recognized. In 1982, the Board of Parole released 61% of all prisoners at their first hearing dates, and 73% of the remainder were released at their second hearing dates. As might be expected, in a recent study by the Board of Parole which was designed to evaluate the success or failure of prisoners released to parole supervision, the authors found

that 52% of parolees incurred new arrests during the two-year period following their release.*/ Eighty percent of those rearrested subsequently were convicted. Of additional interest is the further finding that of those who sustained convictions while on parole, more than one-half never had their parole revoked, and remained on the streets of this community pending their new convictions. Thus, an unacceptably high number of offenders who are on parole are continuing to victimize law-abiding citizens, and to add to their number by prematurely releasing others would only exacerbate the situation.

In light of all of the above, it is evident that our jail and prisons house dangerous and repeat offenders, many of whom maintain dangerous drug habits, and almost all of whom must remain incarcerated with their normal release dates if anything more than lip service is to be paid to ensuring community safety.

Next, it is important to emphasize that the citizens of this City, who comprise the Council's and my own constituency, want serious offenders to remain incarcerated. Their concerns were made clear by their overwhelming approval of the Mandatory Minimum Sentences Initiative which became law last June. They also have supported recent police efforts to apprehend repeat and serious offenders, and are participating in growing numbers in neighborhood crime watch programs. The Council would be showing disdain for these efforts if it enacted the proposed Bills.

Further, much public and private effort and money have been expended in order to identify, apprehend, and convict serious offenders. This investment of time and money should not be wasted by releasing those offenders prematurely. Such a result would be inconsistent with the popular view that violent and dangerous offenders should be incarcerated, as evidenced also by the strong support shown for the bail law amendments which were passed unanimously by this Council 15 months ago.

*/ Of those, 25% were rearrested between 1 to 4 months of parole, 56% were rearrested within 8 months of their parole, 79% were rearrested within a year, and only 21% lasted at least 13 months without being rearrested.

Given this expressed concern, it should be no surprise that the citizens would be willing to foot the bill to keep dangerous recidivists off the streets. As do you, we have frequent contacts with citizens and community leaders. It is our conclusion that they virtually unanimously support the appropriation of public funds to increase jail capacity. I would willingly join with the Council in posing the issue directly to the citizens of this City, and I would live (happily, I am confident) with the results. Moreover, such expenditures ultimately would be returned to the City many times over if the streets were made safer for businesses on which to operate and for individuals to enjoy.

Additionally, to release criminals prematurely is to buck the current local and national trend to treat crime victims, both actual and potential, with more compassion. The majority of released criminals currently victimize others shortly after their release; their premature release thus would create proportionately more victims. Not only is this result unacceptable to the reasonable person; it is contrary to the expressed intent of this Council in proposing and passing several victims rights bill, two of which are scheduled to be heard in two weeks, on October 17, 1983.

In sum, any measure which would result in the premature release of serious offenders would make a mockery of citizen efforts to improve the safety of their community, would be inconsistent with other actions taken by this Council, and would contradict common sense.

It is thus clear that the problem of prison undercapacity can be solved only by building or acquiring more prison space, and this is a solution that not only is attainable, but that is directly supported by the Congress of the United States, which only last week appropriated more than $20 million for added prison facilities. In the recent past, due to the growing crime rate, the criminal justice system has been supplied with additional judges, additional prosecutors, additional support personnel, and additional court facilities. Despite those facts, little additional prison space has been provided to house the additional criminals which inevitably have been caught, prosecuted, and incarcerated. This situation cries out for correction.

It should be noted that our jail is crowded with inmates who properly should be in a prison facility. Data developed by the Department of Corrections reveals that in 1982, an average of 482 inmates, or 25.1% of the total jail

population, were sentenced felons. An additional average of 212 prisoners, or 11.1% of the total jail population, were sentenced misdemeanants. These inmates should have been sent to a correctional, instead of to a detention, facility. If that had occurred, the jail (by its own figures) would have been underpopulated. We believe that this situation remains unchanged in 1983.

Further, it is significant to note that, contrary to the belief of some, the jail is not full of pretrial detainees. Jail authorities unfortunately do not keep precise statistics, but a substantial number of the unsentenced offenders actually have been convicted but remain in jail awaiting sentence. Therefore, the percentage of unsentenced offenders who are detained awaiting trial should be very small -- probably less than 10% of all defendants awaiting trial. Moreover, under the current bail laws, almost all of those are violent, dangerous, and/or repeat offenders.

Some have suggested that because recent crime statistics seem to indicate that reported crime has decreased slightly, no new measures need be taken to expand prison capacity. Initially, I would point out that the figures reflect only the reported crime rate, and it is commonly accepted that 50 to 70% of the crime in any large urban area goes unreported. Beginning, however, with the reported crime rate, the Metropolitan Police Department's own statistics reveal that in 1982 they "closed," by identifying the assailant, only 57.5% of the murders, 64.3% of the forcible rapes, 20.8% of the robberies, 65.6% of the aggravated assaults, and 13.2% of the burglaries which were committed and reported. These numbers do not reflect accurately the percentage of criminals actually caught, however, because the Police Department considers a case "closed" if only one of several perpetrators is identified, and in a significant number of cases, identification does not correlate with arrest. In sheer numbers, the Police Department reported that in 1982 it "closed" 127 out of 221 reported murders, 285 out of 443 reported rapes, 2,040 out of 9,799 reported robberies, 2,332 out of 3,553 aggravated assaults, and 2,071 out of 15,682 reported burglaries.

Of the 221 reported homicides, only 61 guilty judgments were entered, with 33 cases remaining open. Thus, in less than 30% of the reported homicides was the murderer ever held accountable for his actions. Further, of the 443 reported rape offenses, only 76 guilty findings were obtained. Of the frightening total of 9,799 reported robberies, only 706 defendants were held accountable. For the offense of aggravated assault, only 182 defendants were found guilty out of 3,553 reported cases, and for the offense of burglary, only

419 guilty judgments were entered out of a total of 15,682 reported cases. Moreover, it is unquestionably true that a large percentage of those convicted received probation, and that less than half of them went to jail. In short, of the total number of persons who commit crimes in this City, only 20 to 50% have their criminal activities reported, only 10 to 20% are identified, less than 5% are convicted, and less than 3% are incarcerated. Thus, it is clear that of the large number of serious offenders in this City, only an infinitesimal percentage actually are incarcerated for their crimes. To strive artificially through legislative fiat to reduce this number manifestly is absurd, for that percentage is, in my view, an irreducible minimum.

Also illustrative of the continuing serious nature of the crime problem in this City are the increases in the reported incidents of armed robbery, robbery, and drug offenses. Over the last five years the number of adults arrested for armed robbery increased from 721 in 1978 to 896 in 1981, with the 1982 statistics showing a slight decline to 805. The number of adult arrests for unarmed robberies increased steadily from 849 in 1978 to 1,097 in 1981, with the 1982 figures showing a slight decrease to 1,014. For felony drug offenses, the numbers have risen steadily from 169 arrests in 1978 to 2,353 in 1982. An additional 4,641 misdemeanor drug arrests were made in 1982.

Insofar as the number of cases indicted may provide a more accurate forecast of the future prison population, the statistics for the key offenses of armed robbery and drug abuse are both informative and staggering. In 1978, 372 defendants were indicted for armed robbery, and 124 defendants were indicted for drug offenses. In 1982, 561 defendants were indicted for armed robbery, and 863 defendants were indicted for drug offenses.

It is therefore evident that any slight decrease in the amount of reported dangerous and violent crime in this City will have no long-term effect on the prison population, and should not be used as an excuse to ignore the problem of prison undercapacity. Similarly, discussions of alternative sentencing and diversion beg the issue. Alternative sentencing is a tool which currently is frequently used by judges in appropriate cases, and our Office already is exercising pretrial diversion for virtually every eligible defendant. Further, as stated above, most, if not all, of those sentenced to incarceration previously have been granted forms of diversion and probation. (Literally the only exception to the sequential diversion and probation route prior to incarceration is the first-degree murderer, who may have no prior record but who faces a mandatory sentence of 20 years to life.)

Focusing specifically on the three Bills before the Council today, I must urge the Council to defeat each one. The "Parole Act of 1983," Bill 5-16, introduced by Councilmember Ray, proposes to release exactly those violent and dangerous criminals who should remain incarcerated for a more substantial period of time by reducing the minimum period of detention to 10 years. Those inmates who are incarcerated for more than a minimum of 10 years are murderers, rapists, and armed offenders. This Bill would advance most of their release dates by at least four to five years, and, as statistics prove that the majority of those released will victimize others relatively soon after release, passage of the Bill would pose a clear and present danger to the community.

Moreover, I am obliged to point out that technically the Bill may not accomplish what it supposedly is intended to achieve. The preamble to the Bill states that it intends "to require that all prisoners become eligible for release on parole after having served ten years . . . " (emphasis added), but, in our view, it would not apply to first-degree murder convictions. 22 D.C. Code § 2404(b) states that "notwithstanding any other provision of law," a person convicted of first-degree murder must serve a minimum of 20 years. Additionally, it is questionable whether the Bill's terms would apply to prisoners serving consecutive sentences totaling more than 10 years. (We believe that they would not.) Of course, I am not advocating that this Bill be amended to include persons convicted of premeditated first-degree murder or to prisoners serving substantial consecutive sentences, but rather that it be defeated in its entirety.

Concerning the "Prison Overcrowding Emergency Power Act of 1983," Bill 5-244, also introduced by Councilmember Ray, I note that it would allow the Mayor, as a means of budget control, to release dangerous prisoners into the community. Reduced to its essence, this Bill would sacrifice the safety of the community on the altar of fiscal irresponsibility.

There are other problems inherent in the Bill which should cause it to fail of passage. The Bill provides for repeated acts of reducing sentences by 90 days, even for persons who have no chance of being released immediately as a result. For those prisoners who are not within 90 days of parole eligibility, who indeed may be eight to ten years away from parole eligibility, the existence of an undefined "emergency" would result in reducing their ultimate sentences for no good reason, and would not assist in solving the immediate problem of reducing prison congestion.

The third piece of legislation under consideration, the "District of Columbia Sentencing Improvements Act of 1983," Bill 5-245, introduced by Councilmember Rolark, is unwise and probably illegal. In extending the time for granting a motion to reduce sentence from 120 days to one year, following what ultimately could be a denial of a petition for a writ of certiorari to the Supreme Court years after conviction, this Bill would make a mockery of the time-honored concept of certainty in sentencing, and would undermine the very purpose of deterrence that underlies the act of sentencing. The Supreme Court has spoken clearly about the need for finality in all legal, and especially criminal, proceedings, most recently in deciding death penalty cases. If this Bill passes, defendants will be on notice that the criminal justice system in the District of Columbia may be manipulated to exact minimal punishment, and the deterrent effect of other actions taken by this Council will deteriorate.

Additionally, this Bill would tie up scarce judicial resources at late stages of criminal proceedings, and would detract from recent efforts to afford defendants not yet convicted more speedy trials. I doubt that the Council seriously desires this result.

Moreover, a motion to reduce sentence is not designed to be used as a tool to reduce the number of criminals incarcerated. The caselaw is clear that a motion to reduce sentence properly is to be filed only to allow a court to reconsider its sentencing decision in light of the factors present at the time of sentencing, and not in light of a prisoner's artificial conduct in the early stages of his incarceration. An offender's conduct in prison properly is a subject of consideration by the parole board, and not by the sentencing judge.

Finally, and decisively, this Bill erroneously assumes that the Council has the power to amend the Superior Court Rules which govern the filing of sentence reduction motions. Section 946 of Title 11 of the D.C. Code states that the Federal Rules of Criminal Procedure shall apply in Superior Court except as otherwise authorized by the District of Columbia Court of Appeals. The Home Rule Act provides that the Council of the District of Columbia may not alter Title 11. District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code, Title VI, § 602(a)(4). Therefore, any amendment to the Superior Court Rules requires action by the judges themselves, and any legislation by the Council on this matter would be inappropriate. Nonetheless, I note that the Federal Criminal Rule 35 has been amended to allow greater flexibility, and our courts now are studying the situation.

All three of these Bills thus are based upon the wrong premise -- that convicted serious offenders should be released prematurely for budgetary reasons -- rather than on the correct premise that convicted serious offenders, who at great expense to this City have been apprehended and prosecuted, should be treated and kept in a secure facility for as long as the sentencing judges found appropriate and necessary. Hard statistics prove that premature release results in creating untold numbers of new victims, and to accept this result would be to ignore the citizens' mandate to make their streets, homes, and businesses as safe as possible. It is time for the District of Columbia government to recognize both the realities of the situation and the will of its constituents, to bite the proverbial bullet, and to provide more facilities to solve the problem of prison undercapacity. As I have noted, that task was aided by the fact that just last week, the Congress of the United States appropriated more than $20 million for that purpose. Maximum effective use should be made of those funds, and the Council -- as should the Executive Branch -- should deal realistically with the existing problems.

It does not please me to bring to light the realities of our relative lack of law enforcement success in today's world, in which the cancer of narcotics and narcotics-related crime is eating away at the very fabric of our social institutions. I would serve this distinguished body poorly, however, were I to do otherwise. It is axiomatic that a large amount of crime today is committed by a disproportionately small number of chronic offenders. Once such offenders have been brought to justice, it defies reason to support their premature release for purely budgetary reasons. No one can be unaware of the dramatic increase in recent years of dead-bolt locks, alarm systems, and barred windows and doors. It is the law-abiding citizens of the Nation's Capital, rather than its criminal element, who deserve the full support of the Council.